

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1225

Introduced by Landis, 46

Read first time January 21, 2004

Committee: Judiciary

A BILL

- 1 FOR AN ACT relating to real property; to provide for purchaser
- 2 dwelling actions.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. For purposes of sections 1 to 6 of this act:

2 (1) Association means a nonprofit corporation or
3 unincorporated association of owners created to own and operate
4 portions of a planned community and which has the power to assess
5 association members to pay the costs and expenses incurred in the
6 performance of the association's obligations;

7 (2) Community documents means the articles of
8 incorporation, bylaws, and rules, if any;

9 (3) Dwelling means a single or multifamily unit designed
10 for residential use and any common areas and improvements that are
11 owned or maintained by an association or by members of an
12 association. A dwelling includes the systems, other components,
13 and improvements that are part of a single or multifamily unit at
14 the time of construction;

15 (4) Dwelling action means an action brought through
16 arbitration or in a court (a) by a purchaser against the seller of
17 a dwelling arising out of or related to the design, construction,
18 condition, or sale of the dwelling or (b) by an owner against a
19 remodeler of a dwelling;

20 (5) Multiunit dwelling action means a dwelling action
21 brought by an association or by or on behalf of the owners of five
22 or more individual dwelling units;

23 (6) Purchaser means any person or entity who files a
24 dwelling action; and

25 (7) Seller means any person, firm, partnership,
26 corporation, association, or other organization that is engaged in
27 the business of designing, construction, selling, or remodeling
28 dwellings.

1 Sec. 2. (1) If a purchaser files a dwelling action
2 without first complying with sections 1 to 6 of this act, on
3 application by a party to the action, the court may stay the action
4 for ninety days to allow the parties to comply with such sections.

5 (2) Absent a showing of good cause, the court shall stay
6 a multiunit dwelling action for ninety days to allow the parties to
7 comply with such sections.

8 (3) Absent a showing of good cause, the court shall not
9 stay a dwelling action with respect to claims for alleged defects
10 involving an immediate threat to the life or safety of persons
11 occupying or visiting the dwelling.

12 Sec. 3. (1) At least ninety days before filing a
13 dwelling action the purchaser shall give written notice by
14 certified mail, return receipt requested, to the seller specifying
15 in reasonable detail the basis of the dwelling action.

16 (2) At least ninety days before filing a multiunit
17 dwelling action the purchaser shall give written notice by
18 certified mail, return receipt requested, to the seller specifying
19 in reasonable detail the basis of the multiunit dwelling action.
20 The notice in a multiunit dwelling action involving alleged defects
21 that are substantially similar in multiple residential units may
22 comply with this section by providing a reasonably detailed
23 description of the alleged defects in a fair and representative
24 sample of the affected residential units.

25 (3) After receipt of the notice described in subsection
26 (1) or (2) of this section, the seller may inspect the dwelling to
27 determine the nature and cause of the alleged defects and the
28 nature and extent of any repairs or replacements necessary to

1 remedy the alleged defects. The purchaser shall ensure that the
2 dwelling is made available for inspection no later than ten days
3 after the purchaser receives the seller's request for an
4 inspection. The seller shall provide reasonable notice to the
5 purchaser before conducting the inspection. The inspection shall
6 be conducted at a reasonable time. The seller may use reasonable
7 measures, including testing, to determine the nature and cause of
8 the alleged defects and the nature and extent of any repairs or
9 replacements necessary to remedy the alleged defects. If the
10 seller conducts testing pursuant to this subsection, the seller
11 shall restore the dwelling to the same condition as before the
12 testing.

13 (4) Within sixty days after receipt of the notice
14 described in subsection (1) or (2) of this section the seller shall
15 send to the purchaser a good faith, written response to the
16 purchaser's notice by certified mail, return receipt requested.
17 The response may include an offer to repair or replace any alleged
18 defects, to have the alleged defects repaired or replaced at the
19 seller's expense, or to provide monetary compensation to the
20 purchaser. The offer shall describe in reasonable detail all
21 repairs or replacements that the seller is offering to make or
22 provide to the dwelling and a reasonable estimate of the date by
23 which the repairs or replacements will be made or monetary
24 compensation will be provided.

25 (5) If the seller does not provide a written response to
26 the purchaser's notice within sixty days after receipt of the
27 notice in subsection (1) or (2) of this section, the purchaser may
28 file a dwelling action or multiunit dwelling action without waiting

1 for the expiration of ninety days as required by subsection (1) of
2 this section or a stay, if entered, shall be lifted to allow the
3 action to proceed.

4 (6) Within twenty days after receipt of the seller's
5 response or offer made pursuant to subsection (4) of this section,
6 the purchaser shall provide a good faith, written response. A
7 purchaser who accepts an offer made by the seller pursuant to
8 subsection (4) of this section shall do so in writing by certified
9 mail, return receipt requested. A purchaser who rejects an offer
10 made by the seller pursuant to subsection (4) of this section shall
11 respond to the seller in writing by certified mail, return receipt
12 requested. The response shall include the basis for the
13 purchaser's rejection of the seller's offer and may include a
14 counteroffer. Within ten days after receipt of the purchaser's
15 rejection, the seller may make a best and final offer to the
16 purchaser in writing by certified mail, return receipt requested.

17 (7) The following are not admissible in any dwelling
18 action:

19 (a) A purchaser's good faith notice given to the seller
20 pursuant to subsection (1) or (2) of this section;

21 (b) A seller's good faith response or offer made pursuant
22 to subsection (4) of this section;

23 (c) A purchaser's good faith response or counteroffer
24 made to a seller's offer pursuant to subsection (6) of this
25 section; and

26 (d) A seller's good faith best and final offer made
27 pursuant to subsection (6) of this section.

28 (8) The following are admissible in any dwelling action

1 or multiunit dwelling action:

2 (a) A purchaser's failure to provide a good faith notice
3 to a seller as required by subsection (1) or (2) of this section;

4 (b) A purchaser's failure to allow a reasonable
5 inspection requested by a seller as required by subsection (3) of
6 this section;

7 (c) A purchaser's failure to provide a good faith,
8 written response to a seller's offer as required by subsection (6)
9 of this section; and

10 (d) A seller's failure to respond in good faith to the
11 purchaser's notice as required by subsection (4) of this section.

12 (9) A purchaser may amend the notice provided pursuant to
13 subsection (1) or (2) of this section to include alleged defects
14 identified in good faith after submission of the original notice
15 and within the ninety-day notice period. The seller shall have a
16 reasonable period of time to conduct an inspection, if requested,
17 and thereafter the parties shall comply with the requirements of
18 subsections (3), (4), and (6) of this section for the additional
19 alleged defects.

20 (10) A purchaser's written notice made pursuant to
21 subsection (1) or (2) of this section or an amended notice made
22 pursuant to subsection (9) of this subsection tolls the applicable
23 statute of limitations until ninety days after the seller receives
24 the notice or for a reasonable period agreed to in writing by the
25 purchaser and seller.

26 (11) During the pendency of a dwelling action or
27 multiunit dwelling action the purchaser may supplement the list of
28 alleged defects to include additional alleged defects identified in

1 good faith after filing of the original dwelling action or
2 multiunit dwelling action. The court shall provide the seller a
3 reasonable amount of time to inspect the dwelling to determine the
4 nature and cause of the additional alleged defects and the nature
5 and extent of any repairs or replacements necessary to remedy the
6 additional alleged defects. The parties shall comply with the
7 requirements of subsections (3), (4), and (6) of this section for
8 the additional alleged defects.

9 (12) The service of an amended notice of alleged defects
10 during the pendency of a dwelling action or multiunit dwelling
11 action shall relate back to the original notice of alleged defects
12 for the purpose of tolling applicable statutes of limitations.

13 (13) By written agreement of the seller and purchaser,
14 the time periods provided in this section may be extended. By
15 order of the court, the time periods provided for in subsections
16 (3), (4), and (6) of this section may be extended.

17 Sec. 4. If the original purchaser of a dwelling prevails
18 in a dwelling action or multiunit dwelling action against a seller,
19 the court shall, in addition to damages, award costs and reasonable
20 attorney's fees to the purchaser. If a subsequent purchaser of a
21 dwelling is determined to be the successful party in a dwelling
22 action against a seller, the court may, in addition to damages,
23 award the successful party reasonable attorney's fees and costs.
24 If the seller's offer, including any best and final offer, is
25 rejected and the judgment finally obtained is less than or less
26 favorable to the purchaser than the seller's original offer or best
27 and final offer, the seller is deemed to be the successful party
28 from the date of such offer or best and final offer. If the

1 judgment finally obtained is more favorable to the purchaser than
2 the seller's original offer or best and final offer, the purchaser
3 is deemed to be the successful party from the date of such offer or
4 best and final offer. This section shall not be construed as
5 altering, prohibiting, or restricting present or future contracts
6 or statutes that may provide for attorney's fees.

7 Sec. 5. (1) A seller shall deliver the following notice
8 of the procedure contained in sections 1 to 6 of this act to a
9 purchaser. The notice shall be conspicuous and may be included as
10 part of the underlying contract:

11 NEBRASKA LAW CONTAINS IMPORTANT
12 REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY
13 COMMENCE ARBITRATION OR A COURT ACTION
14 AGAINST ANY SELLER FOR CONSTRUCTION
15 DEFECTS. BEFORE YOU COMMENCE ARBITRATION
16 OR A COURT ACTION YOU MUST DELIVER A
17 WRITTEN NOTICE OF ANY CONDITIONS YOU ALLEGE
18 ARE DEFECTIVE TO THE SELLER AND PROVIDE THE
19 SELLER THE OPPORTUNITY TO MAKE AN OFFER TO
20 REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT
21 OBLIGATED TO ACCEPT ANY OFFER MADE BY THE
22 SELLER. THERE ARE STRICT DEADLINES AND
23 PROCEDURES UNDER STATE LAW. FAILURE TO
24 MEET THOSE DEADLINES OR FOLLOW THOSE
25 PROCEDURES WILL AFFECT YOUR ABILITY TO
26 COMMENCE ARBITRATION OR A COURT ACTION.

27 (2) The notice required in subsection (1) of this section
28 shall be prominently displayed and appear in at least twelve-point

1 bold type.

2 (3) The buyer of the dwelling is not deemed to have
3 received the notice required pursuant to subsection (1) of this
4 section unless the buyer initials the notice provision.

5 Sec. 6. Sections 1 to 6 of this act do not apply:

6 (1) If a contract for the design, construction, sale, or
7 remodel of a dwelling or an association's community documents
8 contain alternative dispute resolution procedures or an arbitration
9 clause pursuant to the Uniform Arbitration Act. If the contract
10 for the sale of a dwelling contains such procedures, the procedures
11 shall conspicuously appear in the contract in bold and capital
12 letters. If the contract for sale of a dwelling contains such
13 procedures, a disclosure statement in at least twelve-point bold
14 type and in capital letters shall appear on the face of the
15 contract and shall describe the location of the alternative dispute
16 resolution procedures within the contract;

17 (2) To personal injury claims;

18 (3) To death claims;

19 (4) To claims for damage to property;

20 (5) To common-law fraud claims; and

21 (6) To claims solely seeking recovery of money expended
22 for repairs to alleged defects that have been repaired by the
23 purchaser.